



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20260171MN000032323B

क	फ़ाइल संख्या FILE NO.	S/49-95/CUS/MUN/2023-24
ख	अपील आदेश संख्या ORDER-IN- APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-799 -25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	29.01.2026
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Bill of Entry no. 7234424 dated 26.10.2016
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	29.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Niraj Silk Mills, 384-E, Dabholkar Wadi, 2nd Floor, Room No 21, Kalbadevi Road, Mumbai-400 002



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.				
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं				
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td><td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td></tr> <tr> <td>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td><td>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td></tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
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5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-				
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -				
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.				
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;				
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए				
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;				
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.				
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees				
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।				
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.				
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.				
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-				
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or				
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.				



ORDER-IN-APPEAL

Appeal has been filed by M/s Niraj Silk Mills, 384-E, Dabholkar Wadi, 2nd Floor, Room No 21, Kalbadevi Road, Mumbai-400 002, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the assessment of Bill of Entry no. 7234424 dated 26.10.2016 (hereinafter referred to as 'the impugned order') by the Proper Officer, Customs, Mundra.

2. Facts of the case, in brief, are that the Appellant filed a Bill of Entry no. 7234424 dated 26.10.2016, wherein the proper officer enhanced the value and the appellant paid differential duty of Rs.281105/-.

2.1 Aggrieved by the order of the Proper Officer, the appellant filed appeal before the Appellate Authority. However, the Appellate Authority, vide OIA No. MUN-CUSTOM-000-APP-079 TO 094-17-18 dated 30.06.2017, rejected the appeal on the grounds that the Appeal Memorandum was not filed by the competent person in terms of Rule 3 of the Custom Appeals Rules, 1982. Further, being aggrieved with said OIA, the Appellant filed further appeal before the Hon'ble CESTAT and Hon'ble CESTAT vide Order A/11161-11168/2023 dated 30.05.2023 has remanded back to the Commissioner (Appeals) to provide an opportunity to the appellant to correct this defect. Consequently, the appellant has filed the rectified appeal on 01.08.2023.

**SUBMISSIONS OF THE APPELLANT:**

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Deputy Commissioner, Customs, Mundra. The Grounds of Appeal are not reproduced in detail for sake of brevity, as the copy of the same is available with the Appellant as well Respondent. However, the same have been examined and the brief is as under:

3.1 The appellant contends that the assessing officer enhanced the transaction value from 1.40 USD per KG to 2.20 USD per KG without providing sufficient or cogent reasons. Under Section 14 of the Customs Act, 1962, the transaction value must be accepted as the primary basis for valuation if the buyer and seller are unrelated and price is the sole consideration. The appellant

argues they fulfilled all these conditions and supported their declared value with a comprehensive set of documents, including the contract, invoice, packing list, and bill of lading. Consequently, they argue that the suomoto enhancement by the officer is illegal and the transaction value should not have been discarded without evidence of extra-commercial considerations or fraudulent documentation.

3.2 The appellant highlights a gross violation of the Customs Valuation Rules, 2007, specifically regarding the hierarchy of valuation methods. According to Rule 3, the transaction value must first be formally rejected before an officer can proceed sequentially to determine value using Rule 4 (identical goods) or Rule 5 (similar goods). In this case, the appellant alleges the officer failed to issue a speaking order or record written reasons for discarding the declared value. Furthermore, they argue that for the department to use contemporaneous NIDB data, they must prove the comparison goods are truly identical or similar in terms of physical characteristics, country of origin, commercial level, and quantity.

3.3 A significant portion of the appeal rests on the failure of the department to follow the principles of natural justice. The appellant claims they were not provided with the "computer printouts" or specific NIDB data that formed the basis of the higher valuation, thereby denying them the opportunity to rebut the claim or establish that the transactions were not comparable. Citing Supreme Court precedents like M/s Gira Enterprises and Polyglass Acrylic Mfg. Co. the appellant argues that assessment cannot be done "behind the back" of the importer and that the burden of proof for undervaluation lies strictly with the department.

3.4 The appellant argues that NIDB data is an insufficient basis for a charge of undervaluation, particularly for fabrics. They state that for Nylon knitted fabrics, prices vary significantly based on specific parameters such as color, size, design, thickness, and chemical composition. The department failed to show that the goods cited in the NIDB data shared these specific parameters with the appellant's shipment. Additionally, the appellant points out that the price difference (from 1.40 to 2.20 USD) is not "significantly higher" according to their interpretation of Rule 12, as it remains within a normal range of international transaction fluctuations.



PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 03.12.2024, 03.01.2025, 03.03.2025, 25.03.2025 and 28.10.2025 following the principles of natural justice however, neither the appellant nor their representative has appeared for the PH nor given any submission in this regard.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Proper Officer and the defense put forth by the Appellant in their appeal. I find that ample opportunities for personal hearing have been given to the Appellant in the matter but they have failed to appear for the same.

5.1 To understand the gravity of the omission in the present case, it is essential to examine the architecture of Section 17 of the Customs Act, 1962, as it stands post the 2011 amendment. The shift from "Departmental Assessment" to "Self-Assessment" was designed to facilitate trade, but it simultaneously introduced rigorous safeguards to prevent arbitrary interference by the Department. Under Section 17(1), an importer entering any imported goods shall self-assess the duty, if any, leviable on such goods. This is the primary act of assessment. The "Proper Officer" is not required to verify every Bill of Entry but is empowered under Section 17(2) to verify the self-assessment.

5.2 If the Proper Officer, upon verification, examination, or testing of the goods, finds that the self-assessment is not done correctly, Section 17(4) allows him to "re-assess" the duty. This power of re-assessment is not absolute or unfettered; it is explicitly contingent upon the officer finding that the self-assessment was "incorrect." Section 17(5) acts as the "Check and Balance" in the statutory scheme providing the Mandatory Requirement of a Speaking Order. It states:

"Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed or any other parameter adopted for the levy of duty, and within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be, the proper officer shall pass a speaking order on the re-assessment,

notwithstanding that the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing."

5.3 The legislature has used the word "shall" in Section 17(5). In legal parlance, and as per the principles of statutory interpretation, the word "shall" denotes a mandatory command. When a statute uses "shall," it must be interpreted as mandatory unless such an interpretation would lead to absurdity. In the context of Customs, where an enhancement of value leads to an additional financial burden on the citizen, the requirement to explain the reasons for such burden is a core constitutional and statutory obligation. The statute prescribes a strict timeline of 15 days. This is intended to ensure that the importer is not kept in the dark about the reasons for the enhancement for an indefinite period. By missing this timeline and failing to issue the order altogether, the Adjudicating Authority has rendered the re-assessment legally infirm.

5.4 The Department often contends that the importer "accepted" the value on the EDI system. However, the proviso to Section 17(5) and various High Court rulings make it clear that mere "electronic" acceptance or payment of duty for the sake of clearance does not constitute a valid "confirmation of acceptance in writing" that would exempt the officer from passing a speaking order. A waiver of a speaking order must be explicit, informed, and truly voluntary—not a result of the "Hobson's choice" faced by importers between paying extra duty or incurring massive demurrage.

5.5 Section 17(5) is inextricably linked to Rule 12 of the Customs Valuation Rules, 2007. If an officer disagrees with the self-assessment (transaction value), he must have "reasons to doubt" the truth or accuracy of the declared value. These reasons must be recorded and shared with the importer via the speaking order. Without the order, there is no evidence that the officer even applied the Valuation Rules correctly.

5.6 The absence of a speaking order in cases of reassessment is not merely a "procedural irregularity" that can be cured by a post-facto explanation; it is a fatal flaw that goes to the root of the jurisdiction and the legality of the assessment. The primary function of a speaking order is to manifest the "ratio decidendi"—the reason for the decision. In the absence of a reasoned order, the re-assessment becomes an "ipse dixit" (an unproven statement) of the officer, which is abhorrent to the rule of law.



5.7 The Hon'ble High Court of Calcutta in **Kothari Metals Ltd. v. Union of India** [2011 (274) E.L.T. 488 (Cal.)] dealt with a similar situation where value was enhanced without reasons. The Court held that:

"The duty to pass a speaking order is cast upon the proper officer whenever he disagrees with the importer. If he fails to do so, he exceeds his jurisdiction, and the resultant assessment is liable to be set aside for being in violation of the express provisions of the Customs Act."

5.8 Under Section 128 of the Act, an importer has a right to appeal against an "order or decision." If no speaking order is passed, the importer is effectively deprived of the material grounds required to draft an appeal. In *Tirupati Components v. Commissioner of Customs*, the Tribunal held that an assessment in the EDI system is indeed an "order," but for it to be sustainable in appeal, it must be supported by the "speaking order" mandated by Section 17(5). Without the speaking order, the "decision" exists in a vacuum, making the appellate process a mockery. In the present case of *M/s. Niraj Silk Mills*, the lack of a speaking order has caused substantive prejudice. The Appellant was forced to pay higher duties based on undisclosed NIDB data. By failing to issue an order, the Adjudicating Authority prevented the Appellant from demonstrating that their goods were not comparable to the NIDB data (due to differences in GSM, quality, or manufacturer). This is a classic case of "justice hurried is justice buried."

5.9 In the present case, by failing to issue a speaking order, the Adjudicating Authority has effectively silenced the importer's right to challenge the valuation on merits. The enhancement appears arbitrary as there are no recorded findings regarding why the declared transaction value was rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The failure to pass a speaking order under Section 17(5) is a clear violation of the statutory mandate and the principles of natural justice. Without such an order, this Appellate Authority is unable to examine the merits of the valuation enhancement. The proper course of action, in line with Section

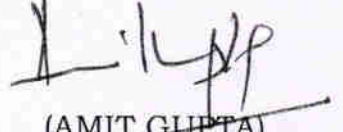
128A(3) and judicial discipline, is to remand the matter for a "de novo" (fresh) adjudication.

6. In view of the detailed discussion and findings above, I set aside the assessment of Bill of Entry No. 7234424 dated 26.10.2016 and remand the matter back to the Proper officer for passing speaking order under Section 17(5) of then Customs Act, 1962 after following the principles of natural justice.

7. The appeal is disposed of by way of remand.

सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD


(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-95/CUS/MUN/2023-24
5546

Date: 29.01.2026

By Speed post /E-Mail

To,
M/s Niraj Silk Mills,
384-E, Dabholkar Wadi,
2nd Floor, Room No. 21,
Kalbadevi Road, Mumbai-400 002



Copy to:

1. ✓ The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.